

## GENERAL INFORMATION

### NEW NONPUBLIC, NONSECTARIAN AGENCY APPLICATION

CERTIFICATION SHOULD NOT BE CONSTRUED AS AN EVALUATION, ACCREDITATION, APPROVAL, RECOGNITION, OR ENDORSEMENT OF ANY NONPUBLIC AGENCY, SCHOOL, OR COURSE.

The following information is from the *Education Code (EC)*, *Code of Federal Regulations (CFR)*, *California Code of Regulations (CCR)*, *Title 5*, as well as policies and procedures approved by the State Board of Education (SBE). This information is provided for assistance and clarification in the development of the application. For further information, refer to the cited documents.

### NONPUBLIC, NONSECTARIAN AGENCY

Nonpublic, nonsectarian agency means a private, nonsectarian establishment or individual that provides related services necessary for an individual with exceptional needs to benefit educationally from the pupils' educational program pursuant to an individualized education program (IEP) and that is certified by the CDE. It does not include an organization or agency that operates as a public agency or offers public service, including, but not limited to, a state or local agency, an affiliate of a state or local agency, including a private, nonprofit corporation established or operated by a state or local agency, a public university or college, or a public hospital. The nonpublic, nonsectarian agency shall also meet standards as prescribed by the CDE and State Board of Education. [*Education Code* § 56035]

It is the intent of the Legislature that the role of the nonpublic, nonsectarian agency shall be maintained and continued as an alternative special education service available to districts, special education local plan areas, county offices, and parents. [*Education Code* § 56366]

A nonpublic, nonsectarian agency shall not claim, and is not entitled to receive reimbursement for attendance, unless: (1) under contract with a public education agency (i.e., school district, special education local plan area (SELPA), or county office), pursuant to the provision of *EC* 56366(c)(1); and (2) the site location where the student is receiving special education or designated instruction and services, has been certified by CDE.

Students supported by federal and state education funds shall have been previously identified as eligible to receive a specially designed education and services by the public education agency where the pupil resides (a school district or county office of education), and has a current IEP (the IEP is a plan developed between the school district or county, the parents, along with a participant from the nonpublic, nonsectarian agency, to decide the kinds of services each student needs).

### SPECIAL EDUCATION

“Special Education” means specially designed instruction, at no cost to the parent, to meet the unique needs of individuals with exceptional needs, whose educational needs cannot be met with modification of the regular instruction program, and related services, at no cost to the parent, that may be needed to assist these individuals to benefit from specially designated instruction.

Special education is an integral part of the total public education system and provides education in a manner that promotes maximum interaction between children or youth with disabilities and children or youth who are not disabled, in a manner that is appropriate to the needs of both.

Special education provides a full continuum of program options to meet the educational and service needs of individuals with exceptional needs in the least restrictive environment.

[*Education Code § 56031*]

## **DESIGNATED INSTRUCTION AND SERVICES**

“Designated instruction and services (DIS), as specified in the IEP shall be available when the instruction and services are necessary for the pupil to benefit educationally from his or her instructional program. The regular education class teacher, the special education class teacher, or the resource specialist shall provide the instruction and services if the teacher or specialist is competent to provide such instruction and if the provision of such instruction and services by the teacher or specialist is feasible. If not, the appropriate designated instruction and services specialist shall provide such instruction and services. Designated instruction and services shall meet standards adopted by the board.”

[*Education Code § 56363(a)*]

For definitions of Designated Instruction and Services, and staff qualifications standards, see *California Code of Regulations, Title 5*, section 3064, 3065.

## **NONSECTARIAN**

“Nonsectarian” means a private, nonpublic agency that is not owned, operated, controlled by, or formally affiliated with a religious group or sect, whatever might be the actual character of the education program or the primary purpose of the facility and whose articles of incorporation and/or by-laws stipulated that the assets of such agency or corporation will not insure to the benefit of a religious group.

[*California Code of Regulations, Title 5, § 3001(w)*]

## **CONTRACTS**

### **Master Contract and Individual Services Agreement**

“The master contract shall include an individual services agreement for each pupil placed by a district, special education local plan area, or county office that shall be negotiated for the length of time for which nonpublic, nonsectarian agency, special education and designated instruction and services are specified in the student's individualized education program.”

[*Education Code § 56366(a)(2)(A)*]

“Changes in educational instruction, services, or placement provided under contract may only be made on the basis of revisions to the pupil's IEP.” [*Education Code § 56366(a)(3)*]

## **CERTIFICATION STANDARDS**

“No master contract for special education and related services provided by a nonpublic, nonsectarian school or agency shall be authorized under this part unless the school or agency has been certified as meeting those standards relating to the required special education and specified related services and

facilities for individuals with exceptional needs. The certification shall result in the agency receiving approval to educate pupils for a period no longer than four years from the date of the approval.” The procedures, methods, and areas of certification, including information required for purposes of the application specified in *EC 56366.1*, have been established by rules and regulations issued by the California State Board of Education (SBE) that include, but not be limited to, procedures for conducting on-site reviews of the nonpublic agency program and provisions specific to providing special education and related services to individuals with exceptional needs. In addition to those standards adopted by the SBE, the agency shall meet all applicable standards relating to fire, health, sanitation, and building safety. [*Education Code § 56366.1*]

## **CERTIFICATION FEES**

An agency shall be charged a reasonable fee for certification. CDE may adjust the fee annually commensurate with the statewide average percentage inflation adjustment computed for revenue limits of unified school districts with greater than 1,500 units of average daily attendance if the percentage increase is reflected in the district revenue limit for inflation purposes. For purposes of this section, the base fee shall be the following:

* 1 - 5	pupils	-	\$ 159.00
6 - 10	pupils	-	\$ 265.00
11 - 24	pupils	-	\$ 530.00
25 - 75	pupils	-	\$ 795.00
Over 75	pupils	-	\$1,059.00

\*Program capacity-the **maximum** number of students to be served by your program.

An NPA shall pay certification fees when it applies for certification and when it submits its annual renewal update application to the CDE. The CDE shall use these fees to conduct on-site reviews, which may include field experts. No fee shall be refunded if the application is withdrawn or is denied by the CDE. [*Education Code § 56366.1 (j)*]

Certification fees are required with the application in the form of either a personal or business check, money order, or cashier's check made payable to: CALIFORNIA DEPARTMENT OF EDUCATION.

**Include the name of the agency on the check or money order.**

## **STAFF QUALIFICATIONS AND REQUIREMENTS**

“Qualified” means that a person has met federal and state certification, licensing, registration, or other comparable requirements which apply to the area in which he or she is providing special education or related services, or, in the absence of such requirements, the state-education-agency-approved or recognized requirements, and adheres to the standards of professional practice established in federal and state law or regulation, including the standards contained in the California Business and Professions Code. Nothing in this definition shall be construed as restricting the activities in services of a graduate student needing direct hours leading to licensure, or of a student teacher or intern leading to a graduate degree at an accredited or approved college or university, as authorized by state laws or regulations.

[*California Code of Regulations, Title 5, § 3001(y)*]

Notwithstanding any other provision of law, only those NPAs that provide special education and designated instruction and services utilizing staff who hold, or are receiving training under the supervision of staff who hold, a current valid California credential or license in the service rendered shall be eligible to receive certification.

Only those NPAs located outside of California, that employ staff who hold a current valid credential or license to render special education and related services, as required by that state's regulations shall be eligible to be certified. [*Education Code* § 56366.1(k)(1)]

Nothing in this subdivision restricts student teachers, interns, or other staff who are enrolled in training programs that lead to a license or credential that authorizes the holder to render services to special education students and who are under the direct supervision of a staff member who holds a current valid California credential, license, or certificate of registration document.

[*Education Code* § 56366.1(k)(2)]

### **Restrictions on Staffing**

- A nonpublic, nonsectarian agency that employs only persons who hold a valid California credential authorizing substitute teaching pursuant to section 56060 shall not be certified. At least one full-time person with a current valid California credential, license, or certificate of registration in the area of service to be rendered, or a current valid credential, license, or certificate of registration for appropriate special education and related services rendered that is required in another state, shall be required for purposes of certification under subdivision (d) of 56366. [*Education Code* § 56366.1 (k)(3)]
- A nonpublic, nonsectarian agency that employs persons holding a valid emergency special education credential shall document efforts of recruiting appropriately credentialed, licensed, or registered personnel for the special education and related services rendered as a condition of renewing certification. [*Education Code* § 56366.1 (k)(4)]

“Credential” means any valid credential, life diploma, permit, or document in special education or pupil personnel services issued by, or under the jurisdiction of, the State Board of Education prior to 1970 or the California Commission of Teacher Credentialing, which entitles the holder thereof to perform services for which certification qualifications are required. [*California Code of Regulations, Title 5, § 3001 (j)*]

### **Staff Fingerprint Clearance Requirements**

Pursuant to Education Code section 44237, all persons hired after September 30, 1997, who have contact with pupils, must have a completed Department of Justice (DOJ) criminal history clearance before they can be employed by the nonpublic agency. For the most current information on fee and fingerprint submissions, please see the DOJ website at [www.caag.state.ca.us/app](http://www.caag.state.ca.us/app) or call (916) 322-2209.

## **Tuberculosis (TB) Clearance Requirements**

Retain TB examination clearance forms at the agency site. Do not submit the clearance unless requested. TB clearances are valid for four (4) years. Skin tests must be the Mantoux 5TU Co.1 cc P.P.D injected intradermally; other skin tests are not acceptable. Only those with documented, positive skin tests may submit certificates to prove absence of active tuberculosis (this may or may not include a chest x-ray).

[*Education Code § 49406; Health and Safety Code § 121525-121555*]

## **EACH SITE SHALL BE CERTIFIED**

Pursuant to Education Code section 56366.1 (b), if a nonpublic agency operates a program at more than one site, each site shall be certified. If a nonpublic, nonsectarian agency operates a facility or program on more than one site, they shall not claim and are not entitled to receive reimbursement for attendance unless under a contract with a local education agency (i.e., school district, special education local plan area, or county office) pursuant to the provisions of Education Code section 56366.1, and the site where the student is receiving special education or designated instruction and services is certified.

[*Education Code § 56366.1 (b)*]

**Note:** This requirement does not apply to nonpublic agency services that are provided at school sites and in settings where the student(s) reside.

## **365-DAY RULE**

No contract for special education and related services provided by a nonpublic, nonsectarian agency shall be reimbursed by the state pursuant to Article 4 (commencing with section 56836.20) of Chapter 7.2 and section 56836.16 if the contract covers special education and related services, administration, or supervision by an individual who is or was an employee of a contracting district, special education local plan area, or county office within the last 365 days, unless the contract contains an addendum establishing that the individual was involuntarily terminated or laid off as part of necessary staff reductions from the district, special education local plan area, or county office.

[*Education Code § 56366.3 (a)*]

Clarification: If an individual's previous position was not supported by special education funding (e.g., an adult education position), they could be employed by your nonpublic, nonsectarian agency.

This section does not apply to any person who is able to provide designated instruction and services during the extended school year because he or she is otherwise employed for up to 10 months of the school year by the district, special education local plan area, or county office. [*Education Code § 56366.3 (b)*]

## **PETITION TO WAIVE REQUIREMENTS**

There are two separate waiver processes to follow depending on the Education Code to be waived.

**State Board Waivers** [*Education Code § 56101*]

A district, special education local plan area, county office, or public education agency may request the board to grant a waiver of any provision of this code or regulations adopted pursuant

to that provision if the waiver is necessary or beneficial to the content and implementation of the pupil's individualized education program.

All special education waiver requests as defined in EC section 56101 must be petitioned to the State Board of Education for processing through the California Department of Education's Office of the Chief Deputy Superintendent for Policy and Programs.

To request Specific Waiver Request forms, please contact the CDE Waiver Office at (916) 319-0824. All State Board of Education waiver requests are to be mailed to the California Department of Education, Waiver Office, 1430 N Street, Suite 5602, Sacramento, CA 95814.

### **Superintendent Waivers [Education Code § 56366.2]**

A Superintendent Waiver does not require approval by the State Board of Education.

A district, special education local plan area, county office, nonsectarian school, or nonpublic nonsectarian agency may petition the superintendent to waive one or more of the requirements under EC 56365, 56366, 56366.3, and 56366.6.

All special education waiver requests petitioned to the superintendent are processed through the California Department of Education, Special Education Division, Office of Nonpublic Schools and Agencies.

To request a waiver form, please contact the Office of Nonpublic Schools and Agencies at (916) 327-0141. All Special Education Superintendent Waivers are to be mailed to the California Department of Education, Special Education Division, Office of Nonpublic Schools and Agencies, 428 J Street, Suite 500, Sacramento, CA 95814.

### **APPLICATION FOR CERTIFICATION**

A nonpublic, nonsectarian, agency that seeks certification shall file an application with the CDE on current year forms provided by the department and include the following information on the application:

1. A description of the special education and designated instruction and services provided to individuals with exceptional needs if the application is for nonpublic, nonsectarian agency certification.
2. A list of appropriately qualified staff, type of credential, license, or registration that qualifies each staff member to render special education or designated instruction and services, and copies of their credentials, licenses, or certificates of registration with the appropriate state or national organization that has established standards for the service rendered.
3. Affidavits and assurances necessary to comply with all applicable federal, state, and local laws and regulations which include criminal record summaries required of all nonpublic agency personnel having contact with minor children under EC 44237.  
[Education Code § 56366.1(a)]

### **Onsite Review at Any Time Without Notice**

The superintendent may conduct an onsite review to monitor a nonpublic, nonsectarian agency at any time without prior notice when there is substantial reason to believe that there is an immediate danger to the health, safety, or welfare of a child. The superintendent shall document the concern and submit it to the nonpublic, nonsectarian agency at the time of the onsite monitoring. The superintendent shall require a written response to any noncompliance or deficiency found. [*Education Code § 56366.1(h)*]

## **APPLICATION REVIEW PROCESS**

The CDE will make a determination on an application within 120 days of receipt of the application and will certify, conditionally certify, or deny certification to the applicant. If the CDE fails to take one of these actions within 120 days, the applicant is automatically granted conditional certification for a period terminating on August 31, of the current school year. If certification is denied, the CDE shall provide reasons for the denial. [*Education Code § 56366.1(e)*]

The superintendent shall annually review the certification of each nonpublic, nonsectarian agency. For this purpose, a certified agency shall annually update its application between August 1 and October 31. The CDE may conduct an onsite review as part of the annual review. [*Education Code § 56366.1(g)*]

## **CAUSES FOR SUSPENSION OR REVOCATION OF CERTIFICATION**

“The superintendent may suspend or revoke the certification of a nonpublic, nonsectarian agency for any of the following reasons:

1. Violation of any applicable state or federal rule or regulation, or aiding, abetting, or permitting the violation of any applicable state or federal rule or regulation.
2. Falsification or intentional misrepresentation of any element of the application, pupil records, or program presented for certification purposes.
3. Conduct in the operation or maintenance of the nonpublic, nonsectarian school or agency that is harmful to the health, welfare or safety of an individual with exceptional needs.
4. Failure to comply with any provision in the contract with the local education entity.
5. Failure to notify the department in writing of any of the following within 45 days of the occurrence:
  - (A) Changes in credentialed, licensed, or registered staff who render special education and related services, ownership, management, or control of the nonpublic, nonsectarian agency.
  - (B) Major modification or relocation of facilities.
  - (C) Significant modification of the nonpublic, nonsectarian school or agency program.
6. Failure to implement recommendations and compliance requirements following an onsite review of the agency.
7. Failure to provide appropriate services, supplies, equipment, or facilities for a pupil as required in his or her individualized education program.

8. Failure to notify the superintendent within 10 days of the revocation or suspension of any license or permit including, but not limited to, any residential care license, business license, or other required license or permit.
9. Failure to implement a pupil's individualized education program.
10. Failure to notify the superintendent in writing within 10 days of the death of a pupil or any other individual of unnatural causes within the agency, including the circumstances surrounding the death and any appropriate preventative measures being taken or recommended.

The superintendent shall notify contracting local education agencies and the special education local plan area in which the nonpublic, nonsectarian agency is located of the determination to suspend or revoke state certification.” [Education Code § 56366.4]

### **REQUEST AND REVIEW OF NOTICE OF DENIAL, REVOCATION, OR SUSPENSION OF CERTIFICATION**

- (A) Within 20 working days following the nonpublic, nonsectarian school's or agency's receipt of the notice of denial, revocation, or suspension of certification, the nonpublic, nonsectarian agency may file a written petition to request a review of the decision by CDE. The petition may include written arguments or a request to present an oral argument.
- (B) Within 30 working days after the receipt of the written petition, the superintendent or a designee shall review a written, reasoned decision that shall be the final administrative decision. A designee of the Superintendent shall be impartial, unbiased, and shall not have participated in the Department decision to deny, revoke, or suspend the nonpublic, nonsectarian agency certification.
- (C) Any public education agency that contracts with a certified nonpublic, nonsectarian agency may request the Superintendent to review the status of the nonpublic agency. The request shall be in writing and a copy sent to the nonpublic agency. [Education Code § 56366.6]

**For more information, please contact the Office of Nonpublic Schools and Agencies at (916) 327-0141 to request a copy the Appeal Process, Program Advisory 93-02 (Revised).**

### **GUIDELINES FOR SITE RELOCATION**

**PLEASE NOTE:** Notification must be provided in writing to the CDE within 45 days of a program move. For programs that provide services on their site, a new fire clearance, health clearance, building safety inspection, zoning clearance, business license, written disaster and mass casualty plan of action must be submitted. All programs that move, including those that provide services on public and nonpublic school sites only, must provide an updated business license showing new address if applicable.

## **CHILD ABUSE REPORTING**

Statutes in the California Penal Code require that private agency personnel report any observed or suspected instances of child abuse by telephone within 24 hours and in writing to the appropriate public authorities within 36 hours.

All personnel employed after January 1, 1985, are required to sign a statement acknowledging the reporting requirements in the case of observed or suspected cases of child abuse. This statement must be maintained in the employee's personnel file. [*Penal Code 11166.5*]

## **MAILING INSTRUCTIONS**

Send the completed application forms, supplemental information, and application fee to the address below. The certification fee must be included with the required application forms, in the form of a personal or business check, money order, or cashier's check (made payable to the *California Department of Education*). Retain a copy of your application for your files.

### **Mailing address for USPS regular mail and overnight Express Mail:**

California Department of Education  
Special Education Division  
Office of Nonpublic Schools and Agencies  
P.O. Box 1738  
Sacramento, CA 95812-1738

### **Physical address for UPS, FedEx, etc., and overnight mail/packages:**

California Department of Education  
Special Education Division  
Office of Nonpublic Schools and Agencies  
428 J Street, Suite 500  
Sacramento, CA 95814

**Note:** To assist the Office of Nonpublic Schools and Agencies in processing and logging your application, date each page, do not submit your application in a binder, bounded, or in page cover sheets. It is helpful when the application is either stapled or paper clipped, and the check is paper clipped to the application. The nonpublic agency should maintain copies of the application forms and general information for future reference.